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## BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP  
Chairman

Arizona Corporation Commission

DOCKETED

JUL 17 2014

GARY PIERCE  
CommissionerBRENDA BURNS  
Commissioner

DOCKETED BY

SUSAN BITTER SMITH  
CommissionerBOB BURNS  
CommissionerARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

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In the Matter of the Application of Zayo Group, LLC for a Limited Waiver of the Public Utility Holding Companies and Affiliated Interest Rules (A.A.C. R14-2-18 *et seq.*) or, in the Alternative, Approval of a Reorganizaition under A.A.C. R17-2-803

DOCKET NO. T-20783A-14-0273

APPLICATION FOR  
LIMITED WAIVERS OF THE PUBLIC UTILITY HOLDING  
COMPANIES AND AFFILIATE INTEREST RULES (A.A.C. 414-2-801 *et seq.*)  
(Expedited Approval Requested)

Pursuant to A.A.C. R14-2-806, Zayo Group, LLC ("Zayo" or "Applicant") requests a limited waiver of the Commission's Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 to R14-2-806 (the "Rules") with respect to a *pro forma* change in indirect ownership of Zayo (the "*Pro Forma* Change") that will occur in connection with an initial public offering ("IPO") by Zayo Group Holdings, Inc. ("Holdings"). Applicant's direct holding company (a copy of Holdings' registration statement on Form S-1 can be found on the SEC website at [www.sec.gov](http://www.sec.gov)). The *Pro Forma* Change will remove Applicant's current indirect holding company from the Holdings and Zayo ownership structure by assigning its owners' equity interests to Holdings and offering a portion of the Holdings equity to the public. It is not expected to

1 result in any new equity owners who will hold 10 percent or more indirect ownership in  
2 Applicant, and there will be no change in any of Zayo's current Arizona operations,  
3 including its rates, terms and conditions of service. In the event the Commission declines  
4 to waive A.A.C. R14-2-806, Zayo alternatively requests, to the extent necessary,  
5 authorization for the *Pro Forma* Change pursuant to the A.A.C. R14-2-803.

6 Because the *pro forma* removal of a holding company from Zayo's ownership  
7 structure is occurring as part of an IPO, it is important that required regulatory approvals be  
8 obtained in a timely fashion to allow flexibility for the IPO to proceed when market  
9 conditions dictate following Securities and Exchange Commission ("SEC") clearances.  
10 Although the ultimate timing and final decision by the SEC is still yet to be determined,  
11 such approval could occur as early as September 30, 2014. Accordingly, Applicant is  
12 seeking to have all state regulatory clearances in hand no later than that date. Pursuant to  
13 A.A.C. R14-2-806(C), Applicant therefore requests that the Commission permit the waivers  
14 to become effective on the 31st day following the filing of this Application. Alternatively,  
15 Applicant requests that the Commission act expeditiously to consider this Application at its  
16 Open Meeting scheduled for September 9, 2014, or any other meeting that may be  
17 scheduled in advance of September 30, 2014, so that the parties will be able to complete the  
18 *Pro Forma* Change and IPO when appropriate.

### 19 INTRODUCTION

20 Zayo holds a Certificate of Convenience and Necessity ("CCN") to provide  
21 competitive telecommunications services in Arizona that was granted by Commission  
22 Decision No. 72561. Based on its reported jurisdictional revenues,<sup>1</sup> Zayo is considered a  
23 Class A utility under the Rules and, therefore, subject to the Rules. The Rules regulate  
24 the formation and reorganization of public utility holding companies and certain

25 <sup>1</sup> The 2013 Annual Report filed by Zayo indicated that it had more than \$1 million in Arizona  
26 revenues in 2013. Upon review, Zayo has determined that the report included certain revenues that were  
not jurisdictional Arizona revenues. Should Zayo determine that its annual Arizona jurisdictional  
revenues for the past 12 months were less than \$1 million, it will withdraw this Application.

1 transactions and activities between public service corporations and their affiliated  
2 interests. According to the Commission, the Rules are intended to: (i) prevent the  
3 commingling of utility and non-utility funds; (ii) prohibit cross-subsidization of non-  
4 utility activities by utility ratepayers; (iii) prevent negative impact of non-utility activities  
5 on a utility's financial credit; and (iv) ensure that the utility and its affiliates provide the  
6 Commission with the information necessary to "carry out its regulatory responsibilities."  
7 See Decision Nos. 56618 and 56844.

8 Applicant submits that, in light of the Rules' stated purposes, Applicant should be  
9 exempt from the requirements of the Rules for the purposes of the *Pro Forma* Change.  
10 As explained below, Applicant operates in a highly competitive environment that  
11 effectively protects customers from activities that will detrimentally affect service to  
12 customers. Moreover, although the *Pro Forma* Change will result in a change in the  
13 indirect ownership of Zayo, no transfer of certificates, assets, or customers will occur.  
14 Zayo will continue to provide service to its customers in Arizona pursuant to  
15 Commission authorization under the same rates, terms, and conditions. The *Pro Forma*  
16 Change will be transparent to the customers of the Applicants. In this instance,  
17 application of the Rules to Applicant would be unreasonably costly and burdensome.  
18 Finally, a limited waiver of these Rules, as permitted under A.A.C. R2-14-806, is in the  
19 public interest.

20 Therefore, Applicant request a limited waiver of the Rules as they may apply to  
21 the *Pro Forma* Change described below.

#### 22 DESCRIPTION OF APPLICANT

23 Zayo is a Delaware limited liability company with principal offices at 1805 29th  
24 Street, Boulder, Colorado 80301. Zayo is a wholly-owned subsidiary of Holdings, a  
25 Delaware corporation. Holdings is currently a wholly-owned subsidiary of  
26

1 Communications Infrastructure Investments, LLC ("CII"), a Delaware limited liability  
2 company. CII has no majority owner.

3 Zayo is a provider of bandwidth infrastructure and network neutral colocation and  
4 interconnection services over regional and metropolitan fiber networks. These services  
5 enable customers to manage, operate, and scale their telecommunications and data  
6 networks. Such customers consist primarily of wireless service providers, national and  
7 regional telecommunications carriers and other communications service providers, media  
8 and content companies, schools, hospitals, governments, banks and other bandwidth-  
9 intensive enterprises.

10 In Arizona, Zayo is authorized to provide facilities-based local exchange services  
11 and resold and facilities-based intraLATA and interLATA private line services pursuant  
12 to Decision No. 72561. Zayo is also authorized by the FCC to provide domestic and  
13 international telecommunications services. Additional information concerning Zayo's  
14 legal, technical, managerial and financial qualifications has been submitted to the  
15 Commission with various prior filings with respect to Zayo's certification and various  
16 transactions and is therefore already a matter of public record. Zayo requests that the  
17 Commission take official notice of these existing descriptions of Zayo's qualifications  
18 and incorporate them by reference herein. In support of its financial qualifications, a copy  
19 of Zayo's most recent SEC Form 10-Q is available at:

20 [http://www.sec.gov/Archives/edgar/data/1502756/000150275614000022/0001502756-14-  
21 000022-index.htm](http://www.sec.gov/Archives/edgar/data/1502756/000150275614000022/0001502756-14-000022-index.htm)

22 and its most recent SEC Form 10-K is available at:

23 [http://zayo.uldev.co/images/uploads/resources/Financial\\_Reports/FY4Q2013/Annual/FY  
24 2013\\_Annual\\_Report\\_10-K\\_\(PDF\).pdf](http://zayo.uldev.co/images/uploads/resources/Financial_Reports/FY4Q2013/Annual/FY_2013_Annual_Report_10-K_(PDF).pdf).

#### 25 CONTACT INFORMATION

26 For the purposes of this Application, contacts for Applicant are as follows:

1 Thomas H. Campbell  
Michael T. Hallam  
2 Lewis Roca Rothgerber LLP  
201 E. Washington St., Suite 1200  
3 Phoenix, AZ 85004-9919  
602-262-5340 (tel)  
4 602-734-3886 (fax)  
[mhallam@lrrlaw.com](mailto:mhallam@lrrlaw.com)

5 and:

with a copy to

6 Jean L. Kiddoo  
Brett P. Ferenchak  
7 Bingham McCutchen LLP  
2020 K Street, N.W., Suite 1100  
8 Washington, DC 20006-1806  
202-373-6000 (tel)  
202-373-6001 (fax)  
9 [jean.kiddoo@bingham.com](mailto:jean.kiddoo@bingham.com)  
10 [brett.ferenchak@bingham.com](mailto:brett.ferenchak@bingham.com)

Scott E. Beer, General  
Counsel  
Zayo Group, LLC  
1805 29th Street  
Boulder, CO 80301  
303-381-4664 (tel)  
303-226-5923 (fax)  
[scott.beer@zayo.com](mailto:scott.beer@zayo.com)

### 11 DESCRIPTION OF THE *PRO FORMA* CHANGE

12 In connection with the planned IPO of Holdings, CII will be eliminated from the  
13 ownership chain between Holdings and the ultimate investors/owners of the company.  
14 As a result of the *Pro Forma* Change, Holdings will become the ultimate parent  
15 company of Zayo rather than an intermediate parent company and the current owners of  
16 CII will have a direct rather than indirect ownership interest in Holdings. Since  
17 immediately after the *Pro Forma* Change Holdings will continue to have direct control  
18 of Zayo and will obtain ultimate control of Zayo with the same ultimate  
19 investors/owners, the *Pro Forma* Change is simply an internal change in the ownership  
20 chain that is *pro forma* in nature. For the Commission's reference, a chart depicting the  
21 pre- and post-*Pro Forma* Change ownership of Zayo is provided as Exhibit A.

22 Upon completion of the *Pro Forma* Change, the current investors/owners of CII  
23 will directly own equity in Holdings. Contemporaneously, Holdings will initiate an IPO  
24 to sell a small part of its equity to the public. Zayo and Holdings do not expect any new  
25 shareholder to obtain a 10% or greater ownership as a result of the IPO. As a result of  
26 the IPO, the shares of some of the current owners will be somewhat diluted.

## BASIS FOR LIMITED WAIVERS

### **A. The Commission Should Grant a Waiver Under A.A.C. R14-2-806 for the *Pro Forma* Change Involving a Competitive Telecommunications Carrier**

A waiver under A.A.C. R14-2-806 Rules would be appropriate in this instance because Zayo operates in a competitive telecommunications environment and the *Pro Forma* Change will not impact the rates, terms or conditions of service for its customers. Allowing a waiver under Rule 806 also would be consistent with the Commission's response to merger applications filed in Docket T-20872A-13-0281 (In re AT&T Corp., Teleport Communications of America, LLC and Leap Wireless International, Inc. Application for Limited Waiver) and Docket No T-04293A-14-0147 (In re Time Warner Cable and Comcast Application for Limited Waiver and Docket T-20872A-14-0186). Certainly, a *pro forma* change in the ownership structure of a competitive carrier raises fewer concerns (if it raises any at all) than those transactions.

In Arizona, Applicant primarily provides competitive bandwidth infrastructure to other carriers, other communications providers and enterprise customers. The market for such services is highly competitive and prices are set by competition. Accordingly, Applicant has no incentive or ability to charge unduly high or above-market prices that could be used to fund or subsidize unregulated affiliates or to commingle utility and non-utility funds in a manner harmful to Arizona customers.

In addition, following the completion of the *Pro Forma* change, Applicant will continue to offer its services with no change in the rates or terms and conditions. Applicant does not anticipate increasing its maximum rates on file with the Commission as a result of the *Pro Forma* Change and related IPO. Applicant stresses that it primarily provides bandwidth infrastructure and wholesale type services and does not provide services to residential customers.

1 **B. Applying the Rules to the *Pro Forma* Change Would Be Unnecessarily Costly**  
2 **and Burdensome**

3 As any company subject to the Rules can attest, filings under R14-2-803 require  
4 significant financial and business information, some of which may not be part of the  
5 normal analysis a competitive company may go through in determining whether to  
6 undertake a transaction. A competitive company expends significant resources and time  
7 to comply with the Rules. Further, once the voluminous information is filed, the  
8 approval process can take many months. In a competitive industry, delaying a  
9 transaction for an indefinite period while awaiting Commission approval can have  
10 significant negative effects on the value of the transaction (in this case, the *Pro Forma*  
11 Change and the IPO) and in some instances may preclude the companies from going  
12 forward with the transaction.

13 In instances such as this when a public utility with no monopoly power competes  
14 in a competitive market, with its revenues from and investment in Arizona comprising  
15 only a small portion of its total corporate revenues and investment, application of the  
16 Rules is not necessary for such a transaction. The risk to Arizona customers from the  
17 *Pro Forma* Change is remote at best and compliance with the Rules would be unduly  
18 burdensome. Applying the Rules to the *Pro Forma* Change would constitute over-  
19 regulation and would cause needless expense and unnecessary administrative burdens for  
20 the Applicant and the Commission.

21 **C. The *Pro Forma* Change Is Otherwise in the Public Interest**

22 Zayo submits that the *Pro Forma* Change is in the public interest. The *Pro Forma*  
23 Change will provide Holdings and CII with greater flexibility for equity transactions,  
24 including the IPO, as well as other corporate and financial transactions, which will  
25 further strengthen Zayo's financial qualifications. The *Pro Forma* Change will be  
26 entirely transparent to Zayo's customers and will not result in any change in their

1 services. In particular, the rates, terms and conditions of their services will not change as  
2 a result of the purely *pro forma* change.

3 **D. Verification.**

4 Under A.A.C. R14-2-806(B), any request for a waiver of the Rules must be made  
5 by verified application. Accordingly, attached as Exhibit B is the Verification of Scott E.  
6 Beer, Vice President, Secretary and General Counsel of Zayo, Holdings and CII attesting  
7 to the accuracy of the information provided in this Application.

8 **ALTERNATIVE REQUEST FOR APPROVAL UNDER RULES 803.**

9 **A. Introduction.**

10 If the Commission does not grant the limited waivers requested above or permit  
11 them to become effective, Applicant requests that the Commission authorize Zayo to  
12 complete the *Pro Forma* Change and resulting reorganization of a Public Utility Holding  
13 Company under A.A.C. R14-2-803(B). As set forth in more detail above, approval of  
14 this application will enable Holdings to complete an IPO that will benefit the company.  
15 This will strengthen Applicant, and it will also serve to promote competition in Arizona's  
16 telecommunications markets.

17 **B. Rule 803(A) information.**

18 The Applicants provide the following information as required by Rule 803(A):

19 1. *The names and business addresses of the proposed officers and directors of*  
20 *the holding company. See Zayo's SEC Form 10-K referenced above. Zayo's*  
21 *management team is highly experienced in telecommunications.*

22 2. *The business purposes for establishing or reorganizing the holding*  
23 *company.*

24 *See "Description of the Pro Forma Change" above.*

25 3. *The proposed method of financing the holding company and the resultant*  
26 *capital structure. See "Description of the Pro Forma Change" above.*



1           4.     *The resultant effect on the capital structure of the utility.* Applicant does  
2 not expect the *Pro Forma* Change to result in a change to the direct capital structure of  
3 the Applicant. See “Description of the *Pro Forma* Change” above for a description of  
4 the change to the capital structure of Holdings as a result of the *Pro Forma* Change and  
5 IPO.

6           5.     *An organization chart of the holding company that identifies all affiliates*  
7 *and their relationships within the holding company.* See Exhibit A.

8           6.     *The proposed method for allocating federal and state income taxes to the*  
9 *subsidiaries of the holding company.* Applicant does not expect any change in its current  
10 tax allocation methods to occur as a result of the *Pro Forma* Change.

11           7.     *The anticipated changes in the utility’s cost of service and the cost of*  
12 *capital attributable to the reorganization.* Applicant notes that as a non-dominant  
13 carrier, its rates are not regulated on a cost of service basis, as contemplated by this  
14 question. Moreover, Applicant does not have residential customers. In any event,  
15 Applicant does not expect any change to its cost of service as a result of the *Pro Forma*  
16 Change. As described above, the *Pro Forma* Change will be transparent and seamless  
17 for customers. Further, the *Pro Forma* Change and IPO may result in a reduction in  
18 Zayo’s cost of capital as a subsidiary of a publicly traded company.

19           8.     *A description of diversification plans of affiliates of the holding company.*  
20 For a description of the types of business conducted by Applicant, see the Zayo SEC  
21 Form 10-K referenced above.

22           9.     *Copies of all relevant documents and filings with the United States*  
23 *Securities and Exchange Commission and other federal and state agencies.* A copy of  
24 Holdings’ registration statement on Form S-1 can be found on the SEC website at  
25 [www.sec.gov](http://www.sec.gov).

1           10.    *The contemplated annual and cumulative investment in each affiliate for*  
2 *the next five years, in dollars and as a percentage of projected net utility plant, and an*  
3 *explanation of the reasons supporting the level of investment and the reasons this level*  
4 *will not increase the risks of investment in the public utility.* The Applicant notes that,  
5 as a non-dominant carrier, its rates are not regulated on a cost of service basis as  
6 contemplated by this question. In any event, specific projections for each of the next 5  
7 years are not available. The future levels of investment will be determined in response to  
8 market forces and operational needs.

9           11.    *An explanation of the manner in which the utility can assure that adequate*  
10 *capital will be available for the construction of necessary new utility plant and for*  
11 *improvements in existing utility plant at no greater cost than if the utility or its affiliate*  
12 *did not organize or reorganize as a public utility holding company.* The Applicant notes  
13 that as a non-dominant carrier, its rates are not regulated on a cost of service basis, as  
14 contemplated by this question. In any event, Zayo (itself and as the successor to the  
15 competitive carriers it has previously acquired) has a long track record providing  
16 sufficient facilities to ensure an adequate level of service.

17                               **RELIEF REQUESTED**

18           WHEREFORE, Applicant respectfully requests that the Commission:

19           1.    Permit this request for waiver to become effective or grant such waiver of  
20 all notice and approval requirements in A.A.C. R14-2-803 pursuant to A.A.C. R14-2-  
21 806(C).

22           2.    In the alternative, grant approval under A.A.C. R14-2-803 of the requested  
23 *Pro Forma* Change as described in this Application.

24           3.    Waive any other applicable requirements of the Rules as they may apply to  
25 the transaction described herein.  
26

1 Applicant respectfully requests that the Commission commence its examination of  
2 the *Pro Forma* Change as quickly as possible. In the event the Commission does not  
3 allow the requested waivers to become effective under A.A.C. R14-2-806, Applicant  
4 requests that the Commission schedule consideration of this Application at no later than  
5 the September 9, 2014 Commission Open Meeting the parties will be able to complete  
6 the *Pro Forma* Change and IPO.

7 RESPECTFULLY SUBMITTED this 17th day of July, 2014.

8 LEWIS ROCA ROTHGERBER, LLP

9  
10 By



11 Thomas H. Campbell  
12 Michael T. Hallam  
13 201 E. Washington, Suite 1200  
14 Phoenix, Arizona 85004  
15 Attorneys for Zayo Group, LLC

16 ORIGINAL and thirteen (13) copies  
17 of the foregoing filed  
18 this 17th day of July, 2014, with:

19 The Arizona Corporation Commission  
20 Utilities Division – Docket Control  
21 1200 W. Washington Street  
22 Phoenix, Arizona 85007

23 Copy of the foregoing hand-delivered  
24 this 17th day of July, 2014, to:

25 Janice Alward, Chief Counsel  
26 Legal Department  
Arizona Corporation Commission  
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Phoenix, Arizona 85007

Lyn Farmer  
Chief Administrative Law Judge, Hearing Division  
Arizona Corporation Commission  
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**ROTHGERBER**

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1 Steve Olea  
2 Utilities Division  
3 Arizona Corporation Commission  
4 1200 W. Washington Street  
5 Phoenix, Arizona 85007

6 *Jayne Williams*  
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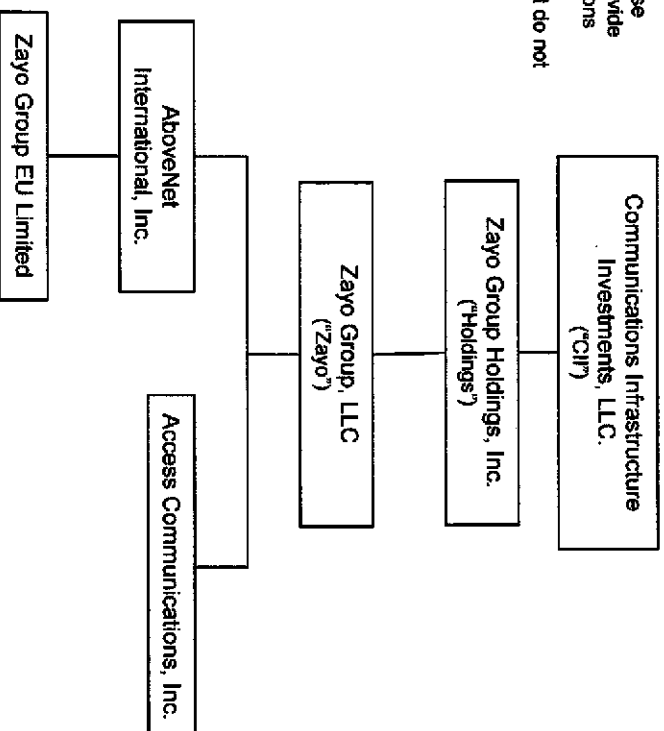
**LEWIS ROCA  
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**EXHIBIT A**  
Pre- and Post-*Pro Forma* Change Ownership Charts

# Pre-Pro Forma Change Corporate Organizational Structure

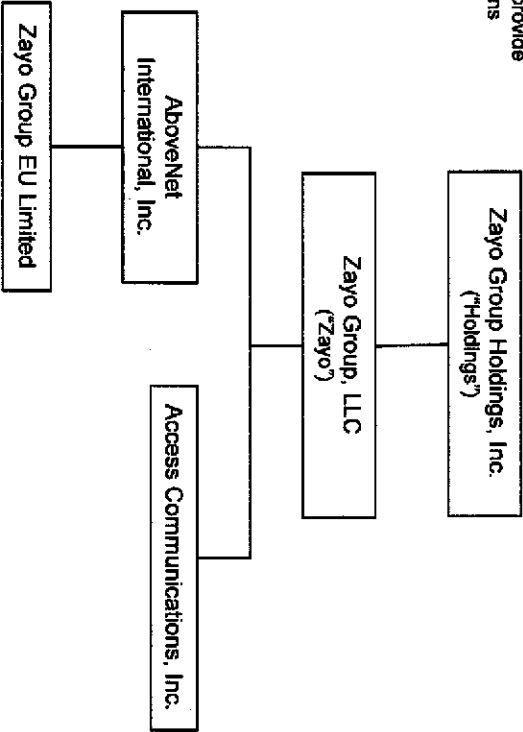
\* The entities listed herein only include Zayo and those subsidiaries of Zayo that (1) hold authorization to provide intrastate, interstate or international telecommunications services or (2) are in the chain of ownership of those entities. The chart excludes subsidiaries of Zayo that do not hold authorization to provide intrastate, interstate or international telecommunications services.



Unless otherwise indicated all ownership percentages are 100%.

# Post-Pro Forma Change Corporate Organizational Structure

\* The entities listed herein only include Zayo and those subsidiaries of Zayo that (1) hold authorization to provide intrastate, interstate or international telecommunications services or (2) will be in the chain of ownership of those entities, after the Pro Forma Change. The chart excludes subsidiaries of Zayo that do not hold authorization to provide intrastate, interstate or international telecommunications services..



Unless otherwise indicated all ownership percentages are 100%.

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Phoenix, AZ 85004-2595

**LEWIS ROCA**  
**ROTHGERBER**

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**EXHIBIT B**  
Verification of Applicant



STATE OF COLORADO

COUNTY OF BOULDER

District of Columbia, City of Washington, D.C.

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### VERIFICATION

I, Scott E. Beer, am Vice President, General Counsel and Secretary of Zayo Group, LLC and its subsidiaries (collectively, the "Company"); that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Scott E. Beer  
Vice President, General Counsel and Secretary  
Zayo Group, LLC

Sworn and subscribed before me this 11th day of July, 2014.

  
\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_  
Sonja Sykes-Minor  
District of Columbia, Notary Public  
My Commission Expires  
October 14, 2014

